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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

Bx

[REDACTED]

FILE: [REDACTED]
EAC 06 176 50548

Office: VERMONT SERVICE CENTER

Date: **JUN 03 2009**

IN RE: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

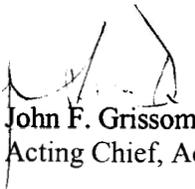
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that she is a person of good moral character.

The petitioner filed a timely appeal on August 27, 2007.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found

to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

Evidence for a spousal self-petition –

- (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

- (vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner is a citizen of Honduras. She married R-V-,¹ a lawful permanent of the United States, on June 10, 1997. R-V- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on January 13, 1998, and it was approved on October 22, 1998.

¹ Name withheld to protect individual's identity.

The petitioner filed the instant Form I-360 on May 18, 2006. The director issued a request for additional evidence on November 2, 2006, and requested evidence to establish that the petitioner shared a joint residence with her husband; that she married her husband in good faith; and that she is a person of good moral character. The petitioner responded on December 18, 2006. On February 16, 2007, the director issued a notice of intent to deny the petition (NOID), which notified the petitioner of deficiencies in the record and afforded her additional time in which to submit additional evidence to establish that she is a person of good moral character. Although the petitioner submitted additional evidence on May 29, 2007, that evidence did not reach the director and, on June 12, 2007, he denied the petition on the basis of the petitioner's non-response. Upon realization that the petitioner had in fact submitted a response to the NOID, the director reopened the matter on July 24, 2007, and issued a new denial.

Upon review, the AAO agrees with the director's decision to deny the petition.

Good Moral Character

The sole issue on appeal is whether the petitioner has established that she is a person of good moral character.

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in May 2003 and ending in May 2006).

The petitioner submitted a local police clearance from Los Angeles County, California. However, in his July 24, 2007 denial, the director noted that the NOID had specifically notified the petitioner that police clearances must be conducted on all names that had been used. As the petitioner had been known as both [REDACTED] and [REDACTED] a police clearance for [REDACTED] alone does not satisfy 8 C.F.R. § 204.2(c)(2)(v); a police clearance for [REDACTED] was also necessary.

On appeal, the petitioner stated that the police department had refused to issue a clearance in the name of [REDACTED], her maiden name, as she had no form of identification with that name. Accordingly, she was currently in the process of obtaining a birth certificate, which would take three to four weeks. After she obtained the birth certificate, she would be able to obtain a clearance from the police department under her maiden name. She stated that, once she had obtained the clearance, she would forward it to U.S. Citizenship and Immigration Services (USCIS).

However, the petitioner never forwarded the additional clearance to the AAO. Accordingly, the record contains no local police clearances or state-issued criminal background check of the petitioner's maiden name. Although she meets all other statutory requirements for approval, the

petitioner's failure to submit the police clearance precludes approval of this petition. The petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to demonstrate that she is a person of good moral character. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.